



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-570-972]

Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

SUMMARY: On November 3, 2011, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of certain stilbenic optical brightening agents ("stilbenic OBAs") from the People's Republic of China ("PRC").<sup>1</sup> The Department invited interested parties to comment on the Preliminary Determination. Based on the Department's analysis of the comments received, the Department has made changes from the Preliminary Determination, and continues to find that stilbenic OBAs from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the "Final Determination" section below.

FOR FURTHER INFORMATION CONTACT: Shawn Higgins or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S.

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<sup>1</sup> See Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 76 FR 68148 (November 3, 2011) ("Preliminary Determination").

## SUPPLEMENTARY INFORMATION:

### Background

The Department published its Preliminary Determination of sales at LTFV and postponement of the final determination on November 3, 2011. Between November 7, 2011, and November 18, 2011, the Department conducted verification of mandatory respondents Zhejiang Transfar Whyyon Chemical Co., Ltd. (“Transfar”) and Zhejiang Hongda Chemicals Co., Ltd. (“Hongda”).<sup>2</sup> Clariant Corporation (“Petitioner”), Transfar, and Hongda submitted case briefs on January 6, 2012.<sup>3</sup> On January 11, 2012, Petitioner and Transfar filed rebuttal briefs. The Department conducted a public hearing on February 1, 2012.

### Period of Investigation

The period of investigation (“POI”) is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2011.<sup>4</sup>

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum.<sup>5</sup> A list of these issues is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized

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<sup>2</sup> See the “Verification” section below.

<sup>3</sup> The Department rejected Transfar’s original case brief because it contained untimely information. See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Transfar, regarding Transfar’s submission of untimely information (January 10, 2012). Transfar submitted a revised version of its case brief on January 13, 2012. See Letter from Transfar to the Secretary of Commerce, “Certain Stilbenic Optical Brightening Agents from China” (January 13, 2012) (“Transfar’s Case Brief”); Letter from Transfar to the Secretary of Commerce, “Certain Stilbenic Optical Brightening Agents from China” (January 11, 2012) (“Transfar’s Rebuttal Brief”).

<sup>4</sup> See 19 CFR 351.204(b)(1).

<sup>5</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, “Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People’s Republic of China” (March 19, 2012) (“Issues and Decision Memorandum”).

Electronic Service System (“IA ACCESS”). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

#### Changes Since the Preliminary Determination

- The Department changed the surrogate value (“SV”) for ocean freight to reflect shipping rates that actually occurred during the POI. In addition, the Department included certain additional charges (i.e., fuel surcharges, destination delivery charges, and bill of lading charges) in the ocean freight calculation because these charges were not separately covered by the brokerage and handling SV.<sup>6</sup>
- The Department changed the SV for ice blocks from Global Trade Atlas import data to a value reported in the publication Business Report Thailand.<sup>7</sup>
- The Department made changes based on minor corrections presented at verification.<sup>8</sup>

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<sup>6</sup> See Issues and Decision Memorandum at Comment 4; Memorandum from Maisha Cryor, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, “Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Final Surrogate Value Memorandum” (March 19, 2012) (“Final SV Memo”) at Attachment 2.

<sup>7</sup> See Issues and Decision Memorandum at Comment 3; Final SV Memo at Attachment 1.

<sup>8</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, and Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, to the File, “Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Verification of the Antidumping Duty Questionnaire Responses of Zhejiang Hongda Chemicals Co., Ltd.” (December 15, 2011) (“Hongda’s Verification Report”); Memorandum from Maisha Cryor, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, “Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Final Determination Analysis Memorandum for Zhejiang Hongda Chemicals Co., Ltd.” (March 19, 2012); Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, and Maisha Cryor, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, “Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Verification of the Antidumping Duty Questionnaire Responses of Zhejiang Transfar Whyyon Chemical Co., Ltd.” (December 15, 2011) (“Transfar’s Verification Report”); Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, “Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Final Determination Analysis Memorandum for Zhejiang Transfar Whyyon Chemical Co., Ltd.” (March 19, 2012).

### Scope of the Investigation

The stilbenic OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (i.e., all derivatives of 4,4'-bis [1,3,5- triazin-2-yl]<sup>9</sup> amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by this investigation include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this investigation are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]<sup>10</sup> amino-2,2'-stilbenedisulfonic acid, C<sub>40</sub>H<sub>40</sub>N<sub>12</sub>O<sub>8</sub>S<sub>2</sub> ("Fluorescent Brightener 71"). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (i.e., mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

### Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Transfar and Hongda for use in its final determination. The Department used

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<sup>9</sup> The brackets in this sentence are part of the chemical formula.

<sup>10</sup> Id.

standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondents.<sup>11</sup>

#### Non-Market Economy Country

The Department considers the PRC to be a non-market economy (“NME”) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC’s status as an NME country. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, the Department continues to treat the PRC as an NME for purposes of the final determination.

#### Surrogate Country

In the preliminary determination, the Department selected Thailand as the appropriate surrogate country for use in this investigation pursuant to section 773(c)(4) of the Act based on the following: (1) it is at a similar level of economic development as the PRC; (2) it is a significant producer of merchandise comparable to the merchandise under consideration; and (3) the record contains reliable data from Thailand that the Department can use to value the factors of production.<sup>12</sup> The Department has not made changes to these findings for the final determination.

#### Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available (“FA”) if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to

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<sup>11</sup> See Transfar’s Verification Report; Hongda’s Verification Report.

<sup>12</sup> See Memorandum to Abdelali Elouaradia from Shawn Higgins, “Certain Stilbenic Optical Brightening Agents from the People’s Republic of China: Surrogate Country Memorandum” (October 27, 2011).

subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

#### PRC-Wide Entity

In the Preliminary Determination, the Department determined that certain PRC exporters/producers did not respond to the Department's requests for information including information pertaining to whether they were separate from the PRC-wide entity.<sup>13</sup> Thus, the Department has found that these PRC exporters/producers are part of the PRC-wide entity and the PRC-wide entity has not responded to requests for information.<sup>14</sup> No additional information was placed on the record with respect to any of these companies after the Preliminary Determination. Because the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

Because the PRC-wide entity did not respond to our request for information, the Department has determined that the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department has found that, in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity.

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<sup>13</sup> See Preliminary Determination, 76 FR at 68150.

<sup>14</sup> Id.

Because the Department begins with the presumption that all companies within an NME country are subject to government control and only the mandatory respondents have overcome that presumption, the Department is applying a single antidumping rate to all other exporters of merchandise under consideration from the PRC. Such companies have not demonstrated entitlement to a separate rate.<sup>15</sup> Accordingly, the PRC-wide entity rate applies to all entries of merchandise under consideration except for entries from Transfar and Hongda.

#### Selection of the Adverse Facts Available Rate for the PRC-Wide Entity

In selecting a rate for adverse facts available (“AFA”), the Department selects a rate that is sufficiently adverse “as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>16</sup> Further, it is the Department’s practice to select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>17</sup> It is the Department’s practice to select as AFA the higher of (a) the highest margin alleged in the petition or (b) the highest rate calculated for any respondent in the investigation.<sup>18</sup> The highest margin alleged in the petition is 203.16 percent.<sup>19</sup> This rate is higher than any of the rates calculated for individually examined companies. Thus, as AFA, the Department’s practice would be to assign the rate of 203.16 percent to the PRC-wide entity. However, in order to determine the probative value of the margins in the petition for use as AFA for purposes of this

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<sup>15</sup> See Notice of Final Determination of Sales at Less Than Fair Market Value: Synthetic Indigo From the People’s Republic of China, 65 FR 25706, 25707 (May 2, 2000).

<sup>16</sup> See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (Feb. 23, 1998).

<sup>17</sup> See Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (Nov. 18, 2005) (quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994)).

<sup>18</sup> See Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725, 60729 (October 1, 2010).

<sup>19</sup> See Certain Stilbenic Optical Brightening Agents From the People’s Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 76 FR 23554, 23558 (April 27, 2011) (“Initiation Notice”).

final determination, the Department examined information on the record and found that it was unable to corroborate either the highest margin in the petition or both its U.S. price and normal value components. In addition, the Department does not find the highest calculated weighted-average margin of the mandatory respondents to be sufficiently adverse to act as the AFA rate.<sup>20</sup> The Department finds, however, that the highest transaction-specific margin of the mandatory respondents (i.e., 109.95 percent) is sufficiently adverse to serve as the AFA rate.<sup>21</sup> No corroboration of this rate is necessary because the Department is relying on information obtained in the course of this investigation, rather than secondary information.<sup>22</sup> This was the same methodology the Department employed in the Preliminary Determination. No interested party has commented on this methodology for calculating the PRC-wide rate.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/manufacturer combinations listed in the chart in the “Final Determination” section below.

### Combination Rates

In the Initiation Notice, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.<sup>23</sup> This practice is described in Policy Bulletin 05.1.<sup>24</sup>

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<sup>20</sup> See Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318, 64322 (October 18, 2011).

<sup>21</sup> Id.

<sup>22</sup> See 19 CFR 351.308(c) and (d) and section 776(c) of the Act; Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China, 73 FR 35652, 35653 (June 24, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>23</sup> See Initiation Notice, 76 FR at 23559.

<sup>24</sup> See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.



### Final Determination

The Department determines that the following dumping margins exist for the period July 1, 2010, through December 31, 2010:

<b>Exporter</b>	<b>Producer</b>	<b>Weighted Average Margin</b>
Zhejiang Hongda Chemicals Co., Ltd.	Zhejiang Hongda Chemicals Co., Ltd.	95.29
Zhejiang Transfar Whyyon Chemical Co., Ltd.	Zhejiang Transfar Whyyon Chemical Co., Ltd.	63.98
PRC-wide Entity	--	109.95

### Disclosure

The Department intends to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all appropriate entries of stilbenic OBAs from the PRC as described in the “Scope of Investigation” section, entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the Preliminary Determination in the Federal Register. The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

### International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of the final affirmative determination of sales at LTFV. As the Department’s final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise under consideration. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

March 19, 2012  
Date

## Appendix I

### ISSUES FOR FINAL DETERMINATION

- Issue 1: Whether the Department Should Revise the Surrogate Value for 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid
- Issue 2: Whether the Department Should Revise the Calculation of the Surrogate Financial Ratios
- Issue 3: Whether the Department Should Revise the Surrogate Value for Ice Blocks
- Issue 4: Whether the Department Should Revise the Surrogate Value for Ocean Freight
- Issue 5: Whether the Department Should Revise the Surrogate Value for Brokerage and Handling
- Issue 6: Whether the Department Should Revise the Surrogate Value for Labor

**[FR Doc. 2012-7215 Filed 03/23/2012 at 8:45 am; Publication Date: 03/26/2012]**